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ABSTRACT

The "Legal Audit Instrument for Public School Curriculum" described in this paper is intended for those making decisions in curricular matters. The instrument has been derived from court decisions that are based on the Federal Constitution, legislation, and regulations. Corresponding cases and provisions within each state will require supplementary attention when the instrument is applied. Over 160 court decisions are identified in the areas of bilingual education; religious instruction; sex, health, and related education; special education; achievement and psychological testing; teaching methods or coverage; and library and instructional materials. Within each of these areas are yes-no questions targeted to local policy and practice. The full version of the instrument indicates the primary source or sources of federal law on which the related case law is based. Finally, the instrument indicates, given a circled response to that question, the probable vulnerability to a successful suit and the approximate assessment of compliance costs, each based on a 1-to-5 scale. On accompanying pages in each section, the instrument lists the corresponding case citations (largely post-1970) for each item. The "Religious Instruction" section is shown in the appendix. (MLF)

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An Instrument for a Legal Review of Public School Curriculum Policies and Procedures

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Perry A. Zirkel

In the past few decades our society in general and our schools in particular have experienced an upsurge in litigation that has reached heretofore unparalleled levels. Educational administrators and attorneys have slowly but surely come to realize the benefits of preventive law and are beginning to incorporate, with appropriate adjustments, strategies and techniques from the commercial sector.

Preventive Law

Preventive law was defined early as "[a] branch of law that endeavors to minimize the risk of litigation or to secure more certainty as to legal rights and duties."[1] Rightfully recognized as the father of preventive law, Louis M. Brown provided a solid base for this approach to law starting at the mid-point of the 20th century.[2] Learning and incorporating lessons from the medical profession, Brown advised law professors[3] and practitioners[4] to focus on legal health, including the early detection of legal risks.[5] Recognizing the need for and value of systematic diagnosis, Brown explored the concept of "legal autopsies"[6] and popularized the concept of "legal audits."[7]

In the successor publication to Brown's 17-year newsletter, the editors of *Preventive Law Reporter* explain: "The basic premise of

1. Webster's Third International Dictionary 1798 (1961).
2. L. Brown, Manual of Preventive Law (1950).
3. Brown, *The Education of Potential Clients*, 24 So. Cal. L. Rev. 183 (1951).
4. Brown, *Preventive Law and Public Relations: Improving the Legal Health of America*, 39 A.B.A. J. 556 (1953).
5. Later in life, while recovering from open heart surgery, Brown further developed and disseminated insights into the importance and implementation of legal health maintenance. *See Preventive Medicine and Preventive Law: An Essay that Belongs to My Heart*, Law. Med. & Health Care 220 (Oct. 1983).
6. Brown, *Legal Autopsy*, 39 J. Am. Judicature Soc'y 47 (1955).
7. Brown, *Legal Audit*, 38 So. Cal. L. Rev. 431 (1965).

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preventive law is that the legal profession can better serve clients by focusing on appropriate consultation and planning rather than looking to litigation as the solution to all legal problems."[8] An implementing technique for individual clients is the periodic legal checkup, a systematic process of legal hygiene that includes data collection, analysis, recommendations, and follow-up.[9] The corresponding technique for institutional clients is the annual legal audit.[10]

Commercial Applications

In a comprehensive overview of the theory and practice of preventive law, Brown and Dauer point out that the initial applications were typical in areas of transaction planning — e.g., contracts, incorporations, wills, and trusts.[11] Consequently, early instrumentation and implementation for institutional clients were largely limited to the business world.[12] More recently, the technique of a periodic legal audit has been variously elaborated for use by corporations.[13] Using an analogy from accounting, Brown and Dauer describe the legal audit in the corporate context as "essentially a professional review of the legal affairs of the business, done periodically and culminating in a summary report to management."[14] They provide a checklist of preliminary audit information, including ownership data, financial data, and other business data, as a possible starting point. Curzan

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8. *Editorial*, 1 Preventive L. Rep. 3 (July 1982). This periodical is published by Butterworth Legal Publishers, 15014 N.E. 40th St., Redmond, Wash. 98052.

9. L. Brown, Manual for Periodic Legal Checkup (1983); *see also* L. Brown & E. Dauer, Planning by Lawyers: Materials on a Nonadversarial Legal Process (1978); *cf.* Office of the Staff Judge Advocate, 12th Flying Training Wing, Preventive Law Handbook (undated booklet describing legal asistance program at Randolph, Texas, Air Force Base).

10. *See supra* note 7 and *infra* notes 13-17 and accompanying text.

11. Brown & Dauer, *A Synopsis of the Theory and Practice of Preventive Law*, in The Lawyer's Notebook (American Bar Association, rev. ed. 1982). This overview is also available in the first three issues of the Preventive Law Reporter (July 1982, Oct. 1982, and Jan. 1983).

12. *See, e.g.*, L. Brown, Legal Checkup Guides for Creditor-Debtor Relationships of a Going Business (1966); E. Dauer, "Preventive Law" for Lenders: an Illustrative Application (Robert Morris Associates Occasional Paper, 1975); *cf.* O'Neal, *Preventive Law: Tailoring Corporate Form of Business to Ensure Fair Treatment for All*, 49 Miss. L.J. 529 (1978).

13. *See, e.g.*, Curzan & Pelesh, *The Changing Role of Outside Counsel: A Proposal for a Legal Audit*, 56 Notre Dame Law 838 (1981); Gonser and Wilhelm, *A New Direction in Preventive Law*, 68 A.B.A. J. 446 (1982); Hardy, *Establishing Corporate Legal Audits and Drafting Compliance Programs*, 2 Preventive L. Rep. 118 (April 1984); Shafton, *Why Corporations Need an Annual Legal Review*, 66 Mgmt. Acct. 66 (Nov. 1981); Shafton, *Why Corporations Need an Annual Legal Review*, 1 Preventive L. Rep. 1 (Jan. 1983); Zeiger, *Legal Audits*, in The New Era of Corporate and Directors Liabilities (M. Pickholz & M. Small eds. 1981).

14. *See* Brown & Dauer, *supra* note 11, at A3-16.

and Pelesh suggest that this periodic function be conducted by an outside, independent counsel, who thereby reports legal problems to the corporate board through a special audit committee.[15] Characterizing the emphasis of the legal audit as "measuring compliance, or noncompliance, with a set of legal standards," Hardy elaborates a largely internal process that includes legal surveys and periodic educational seminars.[16] Pointing out that the checklist will vary according to the nature and needs of the client, Shafton emphasizes that the pervading purpose of the corporate legal audit is "to mold 'hot facts' rather than to aid a litigator supervising an 'autopsy.' "[17]

Educational Applications

The recognition, much less application, of preventive law has been belated and brief in the field of education thus far. In the preface to his text on the law of higher education, Kaplin made passing reference to the distinction between preventive and treatment law.[18] Similarly, the concluding chapter of a leading text dealing with the law of elementary/secondary education refers to a program in preventive law at the Education for the Commission of the States (ECS) that addresses emerging legal requirements.[19]

As the ECS program reveals, the instrumentation for and implementation of preventive law in education is still in its infant stage. Merle McClung, ECS's former director of law and education, proposed a four-step model for new education programs prior to their final formulation and implementation, including an evaluation of their legal merits on a 1-to-5 scale of vulnerability to successful suits.[20] Under ECS's current director of law and education, Patricia Lines, this approach has apparently continued in the form of discussions of emerging legal issues in public education at the state level.[21] Other efforts to put preventive law into practical form for state policymakers and local educators on the elementary/secondary level

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15. *See* Curzan & Pelesh, *supra* note 13, at 847.

16. *See* Hardy, *supra* note 13, at 122, 131.

17. *See* Shafton, *supra* note 13, at 3; *cf.* Brown & Dauer, *supra* note 11, at A3-14: ("Litigating lawyers are historians. Preventive lawyers must be prophets.")

18. W. Kaplin, The Law of Higher Education xii (1978).

19. M. Yudof, D. Kirp, T. Van Geel, & B. Levin, Educational Policy and The Law 813 (1982); *cf.* Hawkins, *Back to the Legal Basics: An Ounce of Prevention*, 21 Kan. Sch. Bd. J. 8 (1982).

20. McClung, *Preventive Law and Public Education: A Proposal*, 10 J. L. & Educ. 37 (1981). McClung appropriately pointed out that extra-legal local considerations must be taken into account and that the auditing approach is not a panacea. *Id.* at 41.

21. *See, e.g., Preventive Law and New Education Initiatives*, 16 Compact 8 (Fall 1983).

have been notably limited in scope[22] and sophistication.[23] The resistance of public school administrators, humorously illustrated by Carr,[24] is understandable but not insuperable.

The progress of preventive law in higher education is largely limited to a comprehensive inventory instrument for private colleges and universities[25] and an accompanying deskbook for the administrators of such institutions.[26] The eight-page inventory is an audit checklist of operational items in six areas: governance and trustees; academic administrators; admissions, financial aid and student programs; business affairs; development; and special problems of church-related colleges. Although helpful in terms of identifying various policies and procedures for possible legal attention, the items do not specifically take into consideration case law developments or the formal academic program. The deskbook, which explicitly advocates and incorporates a "preventive legal planning" approach,[27] specifies critical issues, planning steps, and bibliographic resources for each of eight operational areas.

These scattered sproutings in education, seen in light of the cross-fertilized and productive procedures in the commercial field, suggest that more fruitful growth may be in the offing. In his keynote address at NOLPE's 1983 convention, Bednar pointed out that although preventive law has not reached in public education the level of sophistication attained in business and commercial law, "[its] concepts would have great and immediate utility in many areas of the school practice if only we would pause, think, and use them."[28] Recognizing that techniques from the commercial context are readily applicable to the purely proprietary transactions of school systems, Bednar posed this challenge and observation for educational policy-

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22. *See, e.g.*, Lines, *Legal Do's and Dont's for State Policymakers Seeking to Provide Moral Instruction in the Public Schools*, Religious and Moral Values in Public Schools: A Constitutional Analysis 59 (1981).

23. *See, e.g.*, Johnson, *Guidelines to Help Practitioners Stay Out of Court*, 68 NASSP Bull. 105 (1984).

24. Carr, *How to Avoid Liability (by Avoiding Litigation)*, 63 Principal 51 (Sept. 1983). As a hypothetical and humorous response to a school attorney's advise to list all areas of potential liability in the school and to reduce or eliminate them, this school principal proposed, for example, removing the doors and furniture, discontinuing the lunch and recess programs, and dropping science, reading, and sex education from the curriculum.

25. Center for Constitutional Studies, a Legal Inventory for Independent Colleges and Universities (1981).

26. K. Weeks, Legal Deskbook for Administrators of Independent Colleges and Universities (1982).

27. *Id.* at II-1.

28. W. Bednar, *Preventive School Law*, in School Law Update: Preventive School Law 8-9 (T. Jones & D. Semler eds. 1984).

making and practice:

> Can we develop checklists and procedures for the legal health of our clients? Are "legal audits" practical and affordable? Can we make them that way? [T]here is room for original research on the forms preventive law analysis might take in particular school law problem areas .... Very little of our scholarly legal literature is being written from an overtly preventive point of view.[29]

Terry and Reaves' report at NOLPE's 1984 convention, describing their initial efforts in compiling a legal audit instrument for public school districts based on state statutes, regulations, and cases, is an auspiciously simultaneous development.[30] They emphasized the need for a corresponding effort to tackle the legal issues of a national dimension.

Legal Audit of Curriculum

As mentioned at the outset of this paper, public school administrators are beset by a bewildering and burgeoning array of legal requirements. Although the erupting volcano of legal activity contains succeeding substrata of constitutional, legislative, and regulatory magma, the lava that spurts forth in seemingly unpredictable and visibly threatening masses is litigation, particularly federal court decisions. The number of federal court decisions affecting the public schools for the period 1967-71 (n = 1273) was more than ten times the number for the period 1946-56 (n = 112).[31] More recent data indicate a general leveling off in the total number of such decisions, with an internal shift from overall governance issues to specific teacher and student issues.[32] As an example of the growth in the latter area, a recent compilation revealed that the number of civil cases involving public school students more than doubled in the period from 1977 (n = 217) to 1980 (n = 527).[33]

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29. *Id.* at 12-14.

30. J. Terry & A. Reaves, *Prevention through Policymaking and Legal Auditing* (topic presented at the annual meeting of NOLPE in Williamsburg, December 1984).

31. J. Hogan, The Schools, The Courts, and The Public Interest 7 (1974). State court cases declined during the same period. *Id.*

32. M. Jarvis, *Current Trends in Federal Court Intervention in Public Education* (paper presented at the annual meeting of the American Educational Research Association, April 1984). Jarvis reports an estimate of 1370 federal court decisions for the period 1972-82.

For judicial rather than empirical evidence of this possible plateau in federal case law, *see, e.g.*, Zirkel & Gluckman, *Suer Beware: Is the Pendulum Swinging*, 63 Principal 46 (1983), *reprinted in* 67 NASSP Bull. 126 (1983).

33. T. Marvell, A. Galfo, & J. Rockwell, Student Litigation: a Compilation and Analysis of Civil Cases Involving Students 1977-81 22 (1981). This compilation did not include tort liability cases, and the data for 1981 were not complete.

Curriculum Content

Reflecting the shift from the macro level of school systems to the inner sanctum of the classroom, the courts have helped to create a "new law of curriculum." In an article essentially coining this phrase in its title, van Geel observes:

> [A] whole new body of law has sprung up surrounding the school program. There are new doctrines and rules as to what may and may not be taught, how it must or must not be taught, and who has the authority to decide curricular matters. The schools' program has become legalized and the control of it more centralized.[34]

Yet, the literature available to the administrator is of little practical assistance. The bulk of federal cases decided during the past decade are not tabulated, much less translated into practical and preventive form, in the few legal sources specific to the public school curriculum.[35] The result, as pointed out by Sorensen and Willis, is that "[o]ften choices are made because of ignorance or uncertainty about both the legal constraints and legal freedoms under which local decision-making about public school curriculum operates."[36]

As the aforementioned[37] challenge by Bednar suggests, it is in the area intrinsic to the public educational enterprise that such an approach is necessary and appropriate. The heart of the public school enterprise is teaching learning interaction, or the instructional process. Although variously defined, "curriculum" here is used broadly to refer to this process in terms of the triangular triad of what is targeted, taught, or tested.[38]

Further, the curricular area is particularly amenable to a preventive law approach because the concept of a fiscal audit has already been translated into procedures and instrumentation for an instructional audit.[39] The next section describes an instrument that the

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34. van Geel, *The New Law of the Curriculum*, 86 Sch. Rev. 594 (1978).

35. *See, e.g.*, McGhehey, *Control of the Curriculum*, in The Courts and Education 140 (C. Hooker ed. 1978).

36. G. Sorenson & G. Willis, Constitutional Considerations in Choosing Curriculum Content for Public Schools (unpublished paper).

37. *See supra* note 29 and accompanying text.

38. *See, e.g.*, English & Steffy, *Differentiating Between Design and Delivery Problems in Achieving Quality Control in School Curriculum Development*, 23 Educ. Tech. 29 (Feb. 1983). English uses "written" for the first side of the triangle, referring to lesson plans, textbooks, curriculum guides, and whatever else is used to "target" the areas of instruction. The latter term is used herein for the sake of breadth and symmetry.

39. *See, e.g.*, Burns, English & Robertson, *Performance Audit: A Catalyst for Educational Reform*, 12 Thrust 36 (Nov.-Dec. 1982); Kingston, Barber & Rogers, *The*

author has developed in preliminary form as a first step in meeting Bednar's challenge.

Instrument Format

The "Legal Audit Instrument for Public School Curriculum" has been derived from court decisions that are based on the federal Constitution, legislation, and regulations.[40] Corresponding cases and provisions within each state will require strict but supplementary attention when the instrument is applied.[41] Using the aforementioned central sources of law and definition of public school curriculum, the author has identified over 160 court decisions. The decisions yield items in seven areas: bilingual education; religious instruction; sex, health, and related education; special education; achievement and psychological testing; teaching methods or coverage; library and instructional materials.

Within each of these areas, the items comprise a checklist of yes-no questions targeted to local policy and practice. The answer to each question triggers major or minor attention, somewhat like the aforementioned[42] inventory in higher education. Specifically, a "yes" or "no" response that is circled signals that major attention is appropriate. Next, the full version of the instrument indicates the primary source(s) of federal law on which the related case law is based. Finally, the instrument indicates, given a circled response to that question, the probable vulnerability to a successful suit and the approximate assessment of compliance costs, each based on a 1-to-5 scale reminiscent of McClung's proposal.[43] On accompanying pages in each section, the instrument lists the corresponding case citations for

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Program Audit, 41 Educ. Leadership 50 (May 1984); Stephens, *Improving Instruction: Getting from Point "A" to Point "B"*, 41 Sch. Ad. 16 (June 1984). The "effective schools" movement is currently furthering the instrumentation and utilization of this kind of approach. *See, e.g.*, Appalachia Educational Laboratory, Promoting School Excellence through the Application of Effective Schools Research (B. Sattes ed. 1984); National Ass'n of Elementary School Principals, Standards for Quality Elementary Schools (1984).

40. Depending on feedback in a future stage in development, the author envisions adding items based on relevant directives in federal statutes and regulations that have not evoked judicial review.

41. For an overview of the variety of related statutes and regulations at the state level, *see* National Institute of Education, State Legal Standards for the Provision of Public Education (1978); *see also* Edelman, *Basic American*, 6 NOLPE Sch. L.J. 83 (1976); C. Pipho & C. Hadley, State Activity: Minimal Competency Testing (Education Commission of the States, April 1984); Kenney & Alexander, *Sex/Family Life Education in the Schools: An Analysis of State Policies*, 9 Fam. Plan Population Rep. 44 (June 1980).

42. *See supra* note 25 and accompanying text.

43. *See supra* note 20 and accompanying text.

each item, which are largely post-1970.[44] In order to facilitate the analysis across and within these court decisions, each citation is coded with these symbols in relation to the "trigger" answer for that item:

"+" = favorable support from the point of view of a prospective plaintiff (typically because one or more parents, pupils, or teachers sued and prevailed with respect to this issue in the cited case)

"-" = unfavorable support from the point of view of the prospective plaintiff (typically because the school district defended and prevailed with respect to this issue)

"+/-" = inconclusive or mixed outcome, such as a remand on procedural grounds or partial support for both parties.

Thus, using the "Religious Instruction" section as an example (see the Appendix), the person using the instrument is instructed to first check, with the advice of local counsel, the state legislation and regulations pertaining to religious instruction in the public schools and the court cases pursuant to such legislation and regulations. Assuming the source person is an administrative representative of the school district, whether he uses the instrument directly or via an interview with an internal or outside auditor, the first item asks if "you" (i.e., the school district) provide for or allow organized vocal prayer during the school day. A response of "yes" is circled to trigger attention to high probability of a successful suit, if this policy or practice would be challenged, based on the first amendment of the Constitution. Finally, the fiscal cost for switching to the opposite, defensible posture is estimated to be low. The relevant case citations for this item are shown on the attached page as an unbroken line of 13 court decisions supporting the plaintiff's side, thus leading to the high probability in favor of a successful suit against the school district. The other items relate to other religious-related practices or policies within the school day; thus, practices or policies dealing with prayer groups before or after school or with prayers at baccalaureate or graduation services are not included. Finally, cross references to related items in other sections are noted at the end of this section.

Intended Uses

The development of this draft instrument is only a first step. The

44. Jurisdictional limitations are evident in the citations. Such limitations are left ultimately to the interpretation by the auditing team, which also must take extra-legal policymaking considerations (e.g., risk management and resource allocation) into account.

author envisions the following additional developmental steps:

1. Ascertaining and improving the validity, reliability, and feasibility of the instrument and its administration procedures, based on systematic scrutiny and suggestions by a national panel of school law experts and local school administrators.
2. Pilot testing the revised instrument[45] as administered by a specially trained external legal auditor in cooperation with a local audit committee, which could be comprised, for example, of a board member, the superintendent, a principal, and a teacher organization representative.[46]
3. Dissemination of the revised instrument along with a companion instructional manual and, possibly, source deskbook.[47]

Such steps will obviously require internal fortitude and external funding. Nevertheless, the task is not beyond reach; the work to this point has been accomplished by the author without outside support.

In the meantime, the draft instrument serves not only as an illustration of the legal audit concept as potentially applied to education, but also as a vehicle for the continuing education of school administrators. The author has found the document to be an effective outline for tabulating and translating the burgeoning case law in the curricular area to participants in preventive school law programs sponsored by the National Academy of School Executives (NASE).[48] The first such program was initiated by the author in April 1984; the response was so favorable that it was repeated as a pre-conference institute at AASA's national meeting in March 1985. The author welcomes the suggestions and support of NOLPE in this effort to extend the fruitful work of Brown, Dauer, and others to our nation's public educational institutions.

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45. It is anticipated that only the part of the instrument consisting of the yes-no questions (without circles) will be used for local data collection, with the other parts (viz., source, probability and cost columns and the accompanying citations) subsequently provided in cooperation with the school district's attorney.

A mechanism for regularly updating the instrument, including the case citations, will need to be developed.

46. Depending on local circumstances, the source persons may vary. For example, in large districts the focus of attention may be groups of or even individual schools rather than the entire district. Similarly, procedures may vary to accommodate local limits and concerns such as considerations of confidentiality and concurrence.

47. In interested states, additional items representing that state's statutory and case law may also be developed. *See supra* notes 30 and 41 and accompanying text.

48. NASE is the inservice arm of the American Association of School Administrators (AASA).

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APPENDIX

Religious Instruction*

First check to see if state legislation and/or regulations mandate, permit, or prohibit religious instruction in the schools. Do not assume that these state rules are constitutional; review them carefully with the advice of counsel in light of the following items and cases:

		TRIGGER		SOURCE			PROBABILITY					COSTS				
		Yes	*No*	*Const.***	*Leg.*	*Reg.*	*Lo* 1	2	3	4	*Hi* 5	*Lo* 1	2	3	4	*Hi* 5
1.	Do you provide for or allow organized, vocal prayer, even if only voluntary, as part of the school day?	○		x							x	x				
2.	Do you provide for or allow organized silent meditation, even if only voluntary, as part of the school day?	○		x						x		x				
3.	Do you provide for devotional Bible recitation, with or without excusal, as part of the school day?	○		x							x	x				
4.	Do you provide for Bible study as part of the school program?	○		x					x				x			
5.	Do you provide classes in Transcendental Meditation or in release-time religious education to satisfy elective course requirements?	○		x						x		x				
6.	Do you restrict study of evolution or require study of creationism?	○		x							x	x				
7.	Do you have Christmas songs or realia as part of the school program?	○		x				x				x				
8.	Do you provide academic penalties for student absences on religious holidays, at least when they exceed a limit of two or three such absences?	○		x						x		x				

*See also "Sex, Physical and Related Education" section - items 1 thru 4, and "Text and Library Books" section - items 1 thru 3.

**The primary federal constitutional sources here are the establishment and free exercise clauses of Amendment I.

Religious Instruction

1. (+) **Engel v. Vitale, 370 U.S. 421 (1962)**
   (+) **School Dist. of Abington Township v. Schempp, 374 U.S. 203 (1963)**; *see also* Chamberlin v. Dade County Bd. of Pub. Instruction, 377 U.S. 402 (1964)
   (+) **Attorney Gen. v. School Comm. of No. Brookfield, 199 N.E.2d 553 (Mass. 1964)**; *see also* Johns v. Allen, 231 F. Supp. 852 (D. Del. 1964)
   (+) **Opinion of the Justices, 228 A.2d 161 (N.H. 1967)**
   (+) **DeSpain v. DeKalb County Community School Dist. 428, 384 F.2d 836 (7th Cir. 1967)**, *cert. denied*, 390 U.S. 906 (1968)
   (+) **Mangold v. Albert Gallatin Area School Dist., 438 F.2d 1194 (3d Cir. 1971)**; *see also* Goodwin v. Cross Country School Dist. No. 7, 314 F. Supp. 417 (D. Ark. 1973); Opinion of the Justices, 307 A2d 558 (N.H. 1973)
   (+) **Opinion of the Justices, 307 A.2d 558 (N.H. 1973)**
   (+) **Meltzer v. Board of Pub. Instr., 577 F.2d 311 (5th Cir. 1978)**, *cert. denied*, 439 U.S. 1089 (1979)
   (+) **Kent v. Commissioner of Educ., 402 N.E.2d 1340 (Mass. 1980)**
   (+) **Collins v. Chandler Unified School Dist., 644 F.2d 759 (9th Cir. 1981)**, *cert. denied*, 454 U.S. 863 (1981)
   (+) **Opinions of the Justices to the House of Representatives, 440 N.E.2d 1159 (Mass. 1982)**
   (+) **Karen B. v. Treen, 653 F.2d 897 (5th Cir. 1981)**, *aff'd*, 455 U.S. 913 (1982)
   (+) **Jaffree v. Wallace, 705 F.2d 1526 (11th Cir. 1983)** *rehearing denied*, 713 F.2d 614, *aff'd*, 52 U.S.L.W. 3713 (Apr. 3, 1984)
   (+) *cf.* **Bender v. Williamsport Area School Dist., 741 F.2d 538 (3d Cir. 1984)**
2. (-) **Reed v. Van Hoven, 237 F. Supp. 48 (W.D. Mich. 1965)**
   (-) **Opinion of the Justices (1967)** *supra*
   (-) **Opinion of the Justices (1973)** *supra*
   (-) **Gaines v. Anderson, 421 F. Supp. 337 (D. Mass. 1976)**
   (+) **Beck v. McElrath, 548 F. Supp. 1161 (M.D. Tenn. 1982)**, *vacated for mootness sub nom.* Beck v. Alexander, 718 F.2d 1086 (6th Cir. 1983)
   (+) **Opinions of the Justices to the House of Representatives**, *supra*
   (+) **Duffy v. Las Cruces Pub. Schools, 557 F. Supp. 1013 (D.N.M. 1983)**
   (+) **May v. Cooperman, 572 F. Supp. 1561 (D.N.J. 1983)**
   (+) **Jaffree v. Wallace**, *supra*, *cert. granted*
3. (+) **School Dist. of Abington Township v. Schempp**, *supra*
   (+) **Attorney Gen. v. School Comm. of No. Brookfield; Johns v. Allen**, *supra*
   (+) **Mangold v. Albert Gallatin Area School Dist.; Goodwin v. Cross Country School Dist. No. 7**, *supra*
   (+) **Meltzer v. Board of Pub. Instruction** *supra*
   (+) *cf.* **Stone v. Graham, 449 U.S. 39 (1980)**
   (+) **Hall v. Board of School Comm'rs, 656 F.2d 999 (5th Cir. 1981)**, *appeal after remand*, 707 F.2d 464 (11th Cir. 1981)
4. (+/-) *cf.* **Vaughan v. Reed, 313 F. Supp. 431 (W.D. Va. 1970)**
   (-) *cf.* **Meltzer v. Board of Pub. Instruction**, *supra*
   (+/-) **Wiley v. Franklin, 497 F. Supp. 390 (E.D. Tenn. 1980) ("Wiley III")**
   (+) **Hall v. Board of School Comm'rs**, *supra*
   (+) **Crockett v. Sorenson, 568 F. Supp. 1422 (W.D. Va. 1983)**
5. (-) **Smith v. Smith, 523 F.2d 121 (4th Cir. 1975)**, *cert. denied*, 423 U.S. 1073 (1976)
   (+) **Malnak v. Yogi, 592 F.2d 197 (3d Cir. 1979)**
   (+/-) **Lanner v. Wimmer, 662 F.2d 1349 (10th Cir. 1981)**
6. (+) **Epperson v. Arkansas, 393 U.S. 97 (1968)**
   (+) **Smith v. State, 242 So. 2d 692 (Miss. 1970)**
   (+) **Moore v. Gaston County Bd. of Educ., 357 F. Supp. 1037 (W.D.N.C. 1973)**
   (+) **Wright v. Houston Indep. School Dist., 486 F.2d 137 (5th Cir. 1973)**
   (+) **Daniels v. Waters, 515 F.2d 485 (6th Cir. 1975)**, *on remand*, 399 F. Supp. 510 (M.D. Tenn. 1975)
   (+) **Dale v. Board of Educ., 316 N.W.2d 108 (S.D. 1982)**
   (+) **McLean v. Arkansas Bd. of Educ., 529 F. Supp. 1255 (E.D. Ark. 1982)**
   (-) **Aguillard v. Treen, 440 So. 2d 704 (La. 1983)**
7. (-) *cf.* **Lawrence v. Buchmueller, 243 N.Y.S.2d 87 (Sup. Ct. 1963)**
   (-) **Florey v. Sioux Falls School Dist., 619 F.2d 1311 (8th Cir. 1980)**, *cert. denied*, 449 U.S. 987 (1980)
   (-) **R.J.J. v. Shineman, 658 P.2d 910 (Mo. App. 1983)**
   (-) *cf.* **Lynch v. Donnelly, 52 U.S.L.W. 4317 (Mar. 6, 1984)**
8. (+) **Church of God v. Amarillo Indep. School Dist., 511 F. Supp. 613 (N.D. Tex. 1981)**

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